

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ROBERT GATES

PETITIONER

VS.

CIVIL ACTION NO. 3:19CV581TSL-RHW

VICTOR MASON

RESPONDENT

ORDER

This cause is before the court on the report and recommendation of Magistrate Judge Robert H. Walker entered on April 14, 2020, recommending that Gates' § 2241 petition be dismissed. Petitioner Robert Gates has failed to file an objection and the time for doing so has expired. Having reviewed the report and recommendation, the court concludes that the report and recommendation is well taken and hereby adopts, as its own opinion, the magistrate judge's report and recommendation subject to the following modification: The petition will be dismissed with prejudice as to his failure to state a claim and without prejudice as to any failure to exhaust.

Based on the foregoing, it is ordered that the report and recommendation of United States Magistrate Robert H. Walker entered on April 14, 2020, as modified, be, and the same is hereby, adopted as the finding of this court. Accordingly, it is ordered that the respondent's motion to dismiss is granted and

that the petition is dismissed with prejudice as to his failure to state a claim and without prejudice as to any failure to exhaust.

It is further ordered that a certificate of appealability should not issue. Petitioner has not made a substantial showing of the denial of a constitutional right.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 11th day of May, 2020.

/s/Tom S. Lee

UNITED STATES DISTRICT JUDGE